

AGREEMENT BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA REGARDING MUTUAL
ASSISTANCE IN CUSTOMS MATTERS

The Government of the United States of America and the Government of the People's Republic of China (hereinafter referred to as the "Parties"),

Considering that offenses against Customs laws are prejudicial to the economic, fiscal and commercial interests of their respective countries;

Considering the importance of assuring the accurate assessment of Customs duties and other taxes;

Recognizing the need for international cooperation in matters related to the enforcement and administration of the Customs laws;

Convinced that action against Customs offenses can be made more effective through cooperation between their Customs authorities,

HAVE AGREED as follows:

ARTICLE 1 DEFINITIONS

For the purposes of the present Agreement:

1. "Customs laws" shall mean all statutory and regulatory provisions enforced or administered by the Customs administrations of the Parties concerning the importation, exportation, or transit of goods.
2. "Customs administration" shall mean, in the United States of America, the United States Customs Service, and in the People's Republic of China, General Administration of Customs.
3. "Offenses" shall mean any violation or attempted violation of the Customs laws.

ARTICLE 2 SCOPE OF THE AGREEMENT

1. The Parties agree to provide each other mutual assistance through their Customs administrations to prevent, investigate and repress any offenses, in accordance with the provisions of the present Agreement. All assistance under the present Agreement by the requested Party shall be performed in accordance with its domestic law and within the competence and ability of its Customs administration.
2. Assistance, as provided for in this Agreement, shall also include, upon a Party's own initiative or request, all information apt to ensure the enforcement of the Customs laws and the accurate assessment of Customs duties and other taxes by the Customs administrations.
3. The Customs administrations of the Parties shall also seek to cooperate in:
 - a. the exchange of personnel and experts, which may include the posting of diplomatically accredited Customs attaches, when mutually beneficial for the purpose of advancing the mutual understanding of each other's Customs procedures and techniques;
 - b. initiating, developing or improving special training programs for their personnel;
 - c. the consideration and testing of new equipment or procedures; and
 - d. any other general administrative matters that may from time to time require joint actions by their Customs administrations.
4. In case the Customs administrations of the requested Party is not the appropriate agency to comply with a request for assistance, it shall transmit the request to the appropriate agency, and seek the cooperation of that agency. The requesting Customs administration shall be so advised. Compliance shall be within the discretion of the appropriate agency, which shall be under no obligation to reply to such a request.
5. This Agreement is intended to enhance and supplement mutual assistance practices

presently in effect between the Parties. No provisions in this Agreement may be interpreted in a manner that would restrict agreements and practices relating to mutual assistance and cooperation that are already in effect between the Parties.

6. Assistance as provided for in Paragraph 1 of this Article shall not extend to a request to arrest or detain persons or recover duties, taxes, fines or any other monies on behalf of the requesting Customs administration.

ARTICLE 3 COMMUNICATION OF INFORMATION

1. The Customs administrations of the Parties shall, on their own initiative or upon request, promptly furnish each other information which has come to light in the course of their normal enforcement activities and which gives good reason to believe that a serious customs offense will be committed in the territory of the other Party.

2. The Customs administration of one Party shall, on its own initiative or on request, communicate to the Customs administration of the other Party:

- a. information likely to be of assistance to their investigation and repression of an offense and particularly in connection with new means or methods of committing offenses;
- b. information involving the other Party in respect of sources of smuggling goods, routes of illegal trafficking as well as methods of committing smuggling activities in relation to cases exposed by one Party;
- c. observations and findings resulting from the successful application of new enforcement aids and techniques; and
- d. techniques and improved methods of processing passengers and cargo.

ARTICLE 4 VERIFICATION

1. At the request of the Customs administration of one Party, the Customs administration of the other Party shall communicate to that Customs administration information concerning the following matters:

- a. the authenticity of official documents produced in support of a Goods Declaration made to the Customs authorities of the requesting Party,
- b. whether goods exported from the territory of the requesting Party have been lawfully imported into the territory of the requested Party; and
- c. whether goods imported into the territory of the requesting Party have been lawfully exported from the territory of the requested Party.

2. The information stated in sub-paragraph b and c of Paragraph 1 of this Article shall, upon request, also contain the Customs procedure used for clearing the goods.

ARTICLE 5 ASSESSMENT OF DUTIES

1. The Customs administration of one Party may, for the purpose of assuring the accurate assessment of import or export duties and other taxes, request the Customs administration of the other Party for assistance, if it has good reason to believe that a Customs offense has been committed in its territory.
2. The Customs administration of the requested Party shall, in accordance with its domestic laws, promptly provide the requesting Party with all files, documents and other materials at its disposal in respect of the value, classification, origin and disposition of the goods for Customs purposes.

ARTICLE 6 SPECIAL SURVEILLANCE

At the request of the Customs administration of one Party, the Customs administration of the other Party shall, within the limits of its domestic law and to the extent of its competence and ability, maintain special surveillance for a special period over:

- a. particular persons who are engaged or suspected of being engaged in offenses against the Customs law of the requesting Party;
- b. particular goods which are in connection with or suspected of being in connection with offenses against the Customs law of the requesting Party; and
- c. particular means of transport used to or suspected of being used to commit offenses against the Customs law of the requesting Party,

and shall communicate a report thereon to the Customs administration of the requesting Party.

ARTICLE 7 INVESTIGATION

Upon the request of the Customs administration of one Party, the Customs administration of the other Party shall, subject to its domestic law, conduct all necessary investigations, verifications, or inspections in connection with matters specified in this Agreement, including the questioning of experts, witnesses, and persons suspected of having committed an offense. Where, by domestic law, the requested Customs administration is not competent to conduct the investigation, verification, or inspection, it may provide the assistance requested within the limits of its competence and ability.

ARTICLE 8 DISPOSAL OF FORFEITED PROPERTY

The Parties agree:

- a. to dispose of property, proceeds or instrumentalities forfeited as a result of the

assistance provided for under this Agreement, in accordance with the domestic law of the Party in control of the property, proceeds or instrumentalities;

- b. that either Party may transfer forfeited property or instrumentalities, or the proceeds of their sales to the other Party, to the extent permitted by their respective domestic law, upon such terms as may be agreed.

ARTICLE 9 FORM AND SUBSTANCE OF REQUEST FOR ASSISTANCE

1. Requests pursuant to the present Agreement shall be made in writing and accompanied by documents necessary for the execution of such requests. When required because of the urgency of the situation, oral requests may be accepted, but shall be promptly confirmed in writing.
2. Requests pursuant to Paragraph 1 of this Article shall include the following information:
 - a. the authority making the request;
 - b. the nature of the proceedings;
 - c. the object of and the reason for the request;
 - d. the names and addresses of the parties concerned in the proceedings, if known;
 - e. a brief description of the matter under consideration and the legal elements involved;
and
 - f. the time limit for replying to the request and the requirements for methods of communication.
3. Requests shall be made in either the English or the Chinese language.
4. In the event that a request fails to meet requirements as set forth in this Article, the requesting Customs administration may be allowed to revise it or supplement it.

ARTICLE 10 EXECUTION OF REQUESTS

1. The requested Customs administration shall take all reasonable measures, within its competence and ability, to execute the request.
2. The requested Customs administration shall comply with a request to follow a certain procedure, unless that procedure would conflict with its domestic law or normal practice in force in the country of the requested Party.
3. The requesting Customs administration shall, if it so requests, be advised of the time and place of the action to be taken in response to the request so that such action may be coordinated.

ARTICLE 11
ORIGINALS OF FILES, DOCUMENTS AND OTHER MATERIALS

1. The Customs administrations of the Parties shall, upon request, provide documentation relating to transportation and shipment of goods showing value, disposition and destination of those goods.
2. Upon specific request, copies of files, documents and other materials shall be appropriately authenticated. Originals of such files, documents and other materials shall be requested only in cases where authenticated copies would be insufficient.
3. Originals of files, documents and other materials which have been transmitted shall be returned at the earliest opportunity; rights of the requested Party or of third parties relating thereto shall remain unaffected.
4. When permitted under the domestic law of the requested Party, the Customs administration of the requested Party may authorize its employees to appear as experts in administrative proceedings in the territory of the requesting Party and to produce such files, documents or other materials or authenticated copies thereof, as may be considered essential for the proceedings.

ARTICLE 12
USE OF INFORMATION, DOCUMENTS AND OTHER MATERIALS

1. Information, documents and other materials received in the course of mutual assistance shall be used only by the Customs administration of the receiving Party for the purposes specified in this Agreement.
2. Such information, documents, and other communications shall not be transferred to other agencies or be used for other purposes including for use as evidence in administrative or judicial proceedings except with the expressed consent of the Customs administration which furnished them.

ARTICLE 13
CONFIDENTIALITY

1. Information, documents and other materials received by either Party in the course of mutual assistance shall, upon request of the supplying Party, be treated as confidential. The reasons for such a request shall be stated.
2. Such information, documents or other materials obtained or communicated under this Agreement shall be afforded in the receiving country the same protection in respect of confidentiality and official secrecy as applies in that country to the same kind of information, documents and other materials obtained in its own territory.
3. Nothing in this Agreement shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution or fundamental principles of law of the requesting party in a criminal prosecution. The Customs Administration of the

requesting Party shall notify the Customs Administration of the requested Party in advance of any such proposed disclosure.

ARTICLE 14 EXEMPTION FROM ASSISTANCE

1. If one Party considers that the assistance sought would infringe upon its sovereignty, security, public policy or other national interests, it may decline to afford that assistance or give it subject to certain conditions or requirements.
2. In the event that the request cannot be complied with, the requesting Party shall be promptly notified of that fact, and provided a statement of the reasons and circumstances which might be of importance for the further pursuit of the matter.
3. Assistance may be postponed by the requested Party on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if assistance can be given subject to such terms or conditions as the requested Party may require.

ARTICLE 15 COSTS

1. The Parties shall normally waive all claims for reimbursement of costs incurred in the execution of any assistance under the present Agreement, with the exception of expenses for experts, and costs of interpreters other than government employees.
2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

ARTICLE 16 IMPLEMENTATION OF THE AGREEMENT

1. The Parties agree, that their Customs administrations shall:
 - a. communicate directly and identify the points of contact for the purpose of dealing with matters in connection with the present Agreement;
 - b. after consultation, issue any internal administrative directives necessary for the implementation of the present Agreement; and
 - c. endeavor by mutual accord to resolve problems or doubts arising from the interpretation or implementation of the Agreement.
2. The Parties agree that meetings may be held between the representatives of their Customs administrations, on an annual basis for the first five years following the execution of the Agreement for the purpose of reviewing the implementation of the Agreement. The

meetings shall take place, if necessary, at Commissioner levels on an alternate basis. The date and the agenda of such meetings shall be agreed upon by their Customs administrations sufficiently in advance.

ARTICLE 17
ENTRY INTO FORCE AND TERMINATION

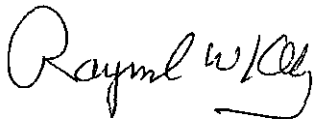
1. The Parties shall notify one another by an exchange of diplomatic notes that all necessary national legal requirements for entry into force have been fulfilled. This Agreement shall enter into force on the ninetieth (90) day following the date of receipt of the last notification.

2. This Agreement is concluded for unlimited duration, but each Party may, at any time, request its termination by serving a written notice through diplomatic channels to the other Party. The present Agreement shall cease to be in force on the ninetieth (90) day following the date of the other Party's receipt of the notice of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, on the ninth day of April, 1999, in the English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA:

